IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 692 OF 2005

WITH

CIVIL APPLICATION NO. 797 OF 2005

Mr.Dhirubhai C. Desai & ors. .. Appellants

versus

Smt.Bhartiben B. Desai & ors. .. Respondents

...

Mr.R.M. Agarwal with Girish Agarwal for the appellants.

Mr.R.C. Shah for the respondents.

CORAM : B.H. MARLLAPALLE,J

ORDER RESERVED : 22nd August 2005.

ORDER PRONOUNCED : August 2005.

ORDER : -

1. Heard Mr.Agarwal, learned counsel for the appellant who are defendants in Special Civil Suit no.12 of 2005 filed by the present respondent. In

the said suit, the application filed at Exhibit-5 for temporary injunction has been allowed by the Learned Civil Judge, Dadra and Nagar Haveli, Silvassa by his order dated 8th April 2005 and hence this appeal against the said order.

2. The plaintiff is the sister of defendant nos.1 to 5 and she claimed 1/6th share in the suit property bearing Survey no. 882/1/2/2 admeasuring about 4.30 hectares and presently standing in the names of defendant nos.1 to 5. The defendants have filed their written statement and opposed the Suit. While they have admitted 1/36th share of the plaintiff in the suit property. they have stated that they decided to sell the suit property for an amount of Rs.2,58,14,200/- and they have also received an amount of Rs.39,90,000/- from the prospective purchaser by signing the agreement of sale. It is pointed out by the defendants that the suit land was originally granted in favour of their grand father and subsequently by the order dated 31st December 1977, it came to be re-granted in favour of their father Chhotubhai Desai. Thus, it being an ancestral property, the plaintiff who was unmarried in the year 1977 and was married in the year 1983,,

would be entitled only for 1/6th share from the share of the father who would have 1/6th share along with the defendants. The plaintiff on the other hand places reliance on the provisions of Dadara and Nagar Haveli Land Reforms Regulations 1971 and the purported admissions made by some of the defendants accepting her share at 1/6th of the suit property. Mr.Agarwal, learned counsel for the defendant has relied upon the decisions in the case of State Bank of India Vs. Ghamandiram through his Legal Representatives (AIR 1969 SC 1330), Nagesh Bisto Desai Vs. Khando K. Desai (AIR 1982 SC 887) and Kalgonda Bapgonda Patil Vs. Balgonda Kalgonda Patil (AIR 1989 SC 1042)

3. During the pendency of the suit, it would be imperative that the respective interests are protected. Mr.Agarwal on his part has stated before the Court that from the total share considerations, the defendants are ready and willing to deposit 1/36th of the said amount in a Nationalised Bank by way of investment, during the pendency of the Suit and he further submitted that no equity beyond this share is created in favour of the plaintiff. The learned counsel for the plaintiff on the other hand

insisted that the plaintiff is entitled for the 1/6th share from the suit property.

4. It is hereby directed that the defendants shall deposit 1/36th of the total consideration agreed upon in the agreement for sale in a Nationalised Bank during the pendency of the Suit by way of investment in the name of the plaintiff and for the balance amount so as to make 1/6th share of the said total consideration amount, they shall furnish a bank guarantee before the trial Court. This shall be done within a period of two weeks from today. The application at Exhibit-5 is decided in these terms and the impugned order stands modified accordingly.

5. Appeal is disposed of in terms of the above directions.

6. Civil Application does not survive.

B.H. MARLAPALLE, J